

A.G. Contract No. KR04-1128TRN
ADOT ECS File No. JPA 04-055
Project No.:
Section: SR 66, Peach Springs
Tracs: H6331 01C
Budget Source Item No. 75305

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE HUALAPAI TRIBE

THIS AGREEMENT is entered into September 23, 2004 pursuant to Arizona Revised Statutes Sections 11-951 through 11-954, as amended between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the HUALAPAI INDIAN TRIBE acting by and through its TRIBAL COUNCIL, (the "Tribe")

I. RECITALS

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this agreement and has by resolution, a copy of which is attached hereto and made part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The Tribe is empowered by Tribal Council Resolution, a copy of which is attached hereto and made a part hereof, and has resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Tribe.

3. Congress has authorized appropriations for, but not limited to, twelve eligible categories of transportation enhancement activities.

4. The State and the Tribe desire to participate in the design and construction of a new sidewalk, curbing, gutters, trash receptacle, decomposed granite, benches and landscaping in Peach Springs, located on the North side of State Route (SR) 66 from Diamond Creek Road, Milepost (MP) 103 west to MP 102.7, hereinafter referred to as the "Project". The parties hereto agree that the Project will be funded using Federal Aid Funds estimated at an amount of \$132,413.00. The State agreed to provide the required matching federal funds at 5.7% for the cost of constructing the Project estimated at an amount of \$8,004.00. The State will design and construct the Project and the Tribe will be responsible for the maintenance of the Project upon completion. The estimated Project costs are as follows:

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

NO. 27115
Filed with the Secretary of State
Date Filed: 09/23/04
Janice K. Brewer
Secretary of State

By: Darryl D. Haeneuwold

Construction & Design	
Total Estimated Construction & Design Costs	\$140,417.00
Estimated Federal Aid Funds @ 94.3%	\$132,413.00
Estimated State Matching Funds @ 5.7%	\$ 8,004.00
Total Estimated Cost of the Project	\$140,417.00

II. SCOPE OF WORK

1. The State will:

a. Submit a program to the Federal Highway Administration (FHWA) containing the above-mentioned Project with the recommendation that it be approved for construction.

b. Construct the Project approved by FHWA if such funds are available for construction. Be the designated authorized agent with the consent of the Tribe and the FHWA and proceed to advertise for, receive and open bids with the aid and consent of the Tribe and the FHWA. Enter into a contract(s) with a firm(s) to whom the award is made with the concurrence of the FHWA. Enter into a Project Agreement with FHWA on behalf of the Tribe to perform, complete, accept and pay for in accordance with instructions and requirements of the Tribe and the Arizona Department of Transportation. Request the maximum federal funds available including construction, engineering and administration costs.

c. Prepare plans, specifications and an estimate for the Project and will submit them to the Tribe for concurrence. After the Tribe concurs with the plans, the Project will be constructed by the State using State and Federal Funds.

d. Not be obligated to maintain this Project, should the Tribe fail to budget or provide for proper and perpetual maintenance as set forth in this Agreement.

e. Grant the Tribe a "Right-of-Way Encroachment Permit through the Kingman District Maintenance Office, to permit the Tribe to perform all planned maintenance work for the Project.

2. The Tribe will:

a. Upon satisfactory completion of construction, approve and accept the Project on behalf of the parties hereto, and as an annual item in the Tribe's budget, provide for proper maintenance and all repairs to the Project, all at the Tribes expense.

b. Be obligated to incur the cost increase of said work due to unforeseen conditions or circumstances required by a change in the extent or scope of work called for by the Tribe, in this Agreement. The Tribe shall be obligated to incur any such increased cost by the Tribe; any such changes require the prior approval of the State.

c. Not make any changes, additions or deletions without written approval of the State.

d. Apply for a State's Encroachment Permit for all work, within the State's right-of-way. The permit Application shall be requested and approved through the State's Kingman Maintenance District Permits Office.

e. The Tribe hereby agrees to maintain the landscaping, including plants, sidewalks, curbing, gutters, trash receptacle, decomposed granite, benches and retaining wall in good repair and in an attractive condition. Maintenance will consist of the care and good repair of all project features listed above and the landscaping in accordance with accepted horticultural practices, keeping all areas in good repair, and free of weeds, undesirable grasses and litter, applying irrigation water, furnishing and applying

insecticide/herbicide sprays and dust to combat diseases and other pests, pruning and replanting as required to maintain the landscaping as it was designed, and established at the completion of the project.

III. MISCELLANEOUS PROVISIONS

1. The terms, conditions and provisions of this Agreement shall remain in force and effect until completion and reimbursements provided herein. However, any provisions for maintenance, electrical power, and water provided by the Tribe, shall be perpetual. This agreement may be cancelled at any time prior to the award of a Project construction contract, upon thirty-days (30) written notice to either party. It is understood and agreed that, in the event the Tribe terminates this Agreement, the State shall in no way be obligated to maintain said Project.

2. In the event there are changes in the Scope of Work, extra work, or changes in the planned work covered by this Agreement, a modification to this Agreement in the form of the Construction Change Order issued by the State's Resident Engineer, signed by representatives for the parties hereto is required prior to the start of work on said changes or additions.

3. This agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this contract.

6. In the event of any controversy that may arise out of this agreement, the parties hereby agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

7. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona, and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

9. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ. 85007

Hualapai Tribe
Chairman
P.O. Box 179
Peach Springs, AZ 86434

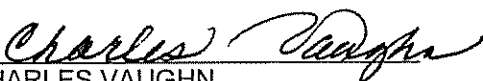
10. Pursuant to Arizona Revised Statutes § 11-952, (D) attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

HUALAPAI TRIBE

STATE OF ARIZONA

Department of Transportation

By 
CHARLES VAUGHN
Chairman

By 
SUSAN TELLEZ
Contract Administrator

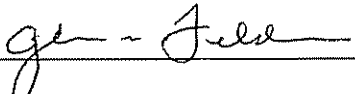
ATTEST

By 
CHRISTINE LEE
Secretary

APPROVAL OF THE HUALAPAI TRIBE

I have reviewed the above referenced proposed intergovernmental Agreement, between the DEPARTMENT OF TRANSPORTATION, TRANSPORTATION PLANNING DIVISION, and HUALAPAI TRIBE and declare this Agreement to be in proper form and within the powers and authority granted to the Tribe under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 31ST day of August, 2004.


Tribe Attorney



OFFICE OF THE ATTORNEY GENERAL
STATE OF ARIZONA

CIVIL DIVISION
TRANSPORTATION SECTION
WRITER'S DIRECT LINE 602.542.8855

TERRY GODDARD
ATTORNEY GENERAL


INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR04-1128TRN (**JPA 04-055**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: September 16, 2004.

TERRY GODDARD
Attorney General


SUSAN E. DAVIS
Assistant Attorney General
Transportation Section

SED/mjf
Attachment
867196